

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEAN-CLAUDE DEMOSTHENIDY, an) Case No. 07cv2050-WQH (BLM)
individual doing business as)
INTERACTIVE DESIGN SYSTEMS,) **CASE MANAGEMENT CONFERENCE**
Plaintiff,) **ORDER REGULATING DISCOVERY AND**
v.) **OTHER PRETRIAL PROCEEDINGS**
(Fed. R. Civ. P. 16)
(Local Rule 16.1)
FINLEY ENGINEERING GROUP, INC.,) (Fed. R. Civ. P. 26)
a Florida corporation; DOES 1)
through 10, inclusive,)
Defendants.)
_____)
and RELATED COUNTERCLAIM.)
_____)

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1 Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a
2 telephonic Case Management Conference was held on February 21, 2008 at
3 2:30 p.m. After consulting with the attorneys of record for the parties
4 and being advised of the status of the case, and good cause appearing,

5 **IT IS HEREBY ORDERED:**

6 1. Any motion to join other parties, to amend the pleadings, or
7 to file additional pleadings shall be filed on or before **April 11, 2008**.

8 2. Each party shall serve on all opposing parties a list of
9 experts whom that party expects to call at trial, on or before **March 23,**
10 **2008**. Each party may supplement its designation in response to the
11 other party's designation no later than **June 13, 2008**. Expert
12 designations shall include the name, address, and telephone number of
13 each expert and a reasonable summary of the testimony the expert is
14 expected to provide. The list shall also include the normal rates the
15 expert charges for deposition and trial testimony.

16 The parties must identify any person who may be used at trial to
17 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules
18 of Evidence. This requirement is not limited to retained experts.

19 **Please be advised that failure to comply with this section or any**
20 **other discovery order of the Court may result in the sanctions provided**
21 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
22 **of experts or other designated matters in evidence.**

23 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)
24 shall be served on all parties on or before **July 3, 2008**. Any
25 contradictory or rebuttal information shall be disclosed on or before
26 **July 25, 2008**. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty on
27 the parties to supplement the expert disclosures made pursuant to Fed.
28 R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are due

1 under Fed. R. Civ. P. 26(a)(3) (discussed below).

2 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)
3 regarding expert disclosures. Such disclosures shall include an expert
4 report, all supporting materials, a complete statement of all opinions
5 to be expressed and the basis and reasons therefor, the data or other
6 information considered by the expert in forming the opinions, any
7 exhibits to be used as a summary of or as support for the opinions, the
8 qualifications of the witness including a list of all publications
9 authored by the witness within the preceding ten years, the compensation
10 to be paid for the study and testimony, and a list of other cases in
11 which the witness has testified as an expert at trial or by deposition
12 within the preceding four years.

13 This disclosure requirement applies to all persons retained or
14 specially employed to provide expert testimony, or whose duties as an
15 employee of the party regularly involve the giving of expert testimony.

16 **Please be advised that failure to comply with this section or any**
17 **other discovery order of the Court may result in the sanctions provided**
18 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
19 **of experts or other designated matters in evidence.**

20 4. All discovery shall be completed by all parties on or before
21 August 22, 2008. "Completed" means that all discovery under Rules 30-36
22 of the Federal Rules of Civil Procedure, and discovery subpoenas under
23 Rule 45, must be initiated a sufficient period of time in advance of the
24 cut-off date, so that it may be completed by the cut-off date, taking
25 into account the times for service, notice, and response as set forth in
26 the Federal Rules of Civil Procedure.

27 Counsel shall promptly and in good faith meet and confer with
28 regard to all discovery disputes in compliance with Civil Local Rules

16.5(k) and 26.1(a). All discovery motions shall be filed within thirty (30) days after counsel have met and conferred and reached an impasse with regard to any particular discovery issue, but in no event shall discovery motions be filed more than sixty (60) days after the date upon which the event giving rise to the discovery dispute occurred. For oral discovery, the event giving rise to the discovery dispute is the completion of the transcript of the affected portion of the deposition. For written discovery, the event giving rise to the discovery dispute is either the service of the response, or, if no response was served, the initial date the response was due. In addition, all discovery motions must be filed within thirty (30) days after the close of discovery.

5. All other pretrial motions must be filed on or before October 17, 2008. Motions will not be heard or calendared unless counsel for the moving party has obtained a motion hearing date from the law clerk of the judge who will hear the motion. Failure to timely request a motion date may result in the motion not being heard. Motions will not be heard unless you have obtained a date from the judge's law clerk.

Questions regarding this case should be directed to the judge's law clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4) which requires that the parties allot additional time for service of motion papers by mail. Papers not complying with this rule shall not be accepted for filing.

Briefs or memoranda in support of or in opposition to any pending motion shall not exceed twenty-five (25) pages in length without leave of the judge who will hear the motion. No reply memorandum shall exceed ten (10) pages without leave of the judge who will hear the motion.

6. A Mandatory Settlement Conference shall be conducted on June 6, 2008 at 9:30 a.m. in the chambers of Magistrate Judge Barbara L.

Major located at 940 Front Street, Suite 5140, San Diego, CA 92101. All discussions at the Mandatory Settlement Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference.

a. **Personal Appearance of Parties Required:** All parties, adjusters for insured defendants, and other representatives of a party having full and complete authority to enter into a binding settlement, as well as the principal attorneys responsible for the litigation, must be present in person and legally and factually prepared to discuss settlement of the case. Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

Unless there are extraordinary circumstances, persons required to attend the conference pursuant to this Order shall not be excused from personal attendance. **Requests for excuse from attendance for extraordinary circumstances shall be made in writing at least three (3) court days prior to the conference.** Failure to appear in person at the Mandatory Settlement Conference will be grounds for sanctions.

b. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with full settlement authority¹ must be present for the conference. In the case

¹ "Full settlement authority" means that the individuals at the settlement conference must be authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v.

of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the Mandatory Settlement Conference (1) has primary responsibility for handling the case, and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

c. **Confidential Settlement Statements Required:** No later than **May 30, 2008**, the parties shall submit directly to Magistrate Judge Major's chambers confidential settlement statements no more than five (5) pages in length. **These confidential statements shall not be filed or served on opposing counsel.** Each party's confidential statement must include the following:

(i) A brief description of the case, the claims and/or counterclaims asserted, and the applicable defenses or position regarding the asserted claims;

(ii) A specific and current demand or offer for settlement addressing all relief or remedies sought. If a specific

Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 demand or offer for settlement cannot be made at the time the brief is
2 submitted, then the reasons therefore must be stated along with a
3 statement as to when the party will be in a position to state a demand
4 or make an offer; and

5 (iii) A brief description of any previous settlement
6 negotiations, mediation sessions, or mediation efforts.

7 General statements that a party will "negotiate in good faith" is
8 not a specific demand or offer contemplated by this Order. It is
9 assumed that all parties will negotiate in good faith.

10 d. **Requests to Continue a Mandatory Settlement Conference:**
11 Any request to continue the Mandatory Settlement Conference or request
12 for relief from any of the provisions or requirements of this Order must
13 be sought by a **written ex parte application**. The application must (1)
14 be supported by a declaration of counsel setting forth the reasons and
15 justifications for the relief requested, (2) confirm compliance with
16 Civil Local Rule 26.1, and (3) report the position of opposing counsel
17 or any unrepresented parties subject to the Order. **Absent extraordinary**
18 **circumstances, requests for continuances will not be considered unless**
19 **submitted in writing no fewer than seven (7) days prior to the scheduled**
20 **conference.**

21 **If the case is settled in its entirety before the scheduled date of**
22 **the conference, counsel and any unrepresented parties must still appear**
23 **in person, unless a written joint motion confirming the complete**
24 **settlement of the case is submitted no fewer than twenty-four (24) hours**
25 **before the scheduled conference.**

26 7. The parties must comply with the pretrial disclosure
27 requirements of Fed. R. Civ. P. 26(a)(3) no later than **January 26, 2009**.
28 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of

1 the required disclosures.

2 **Please be advised that failure to comply with this section or any**
3 **other discovery order of the Court may result in the sanctions provided**
4 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
5 **of designated matters in evidence.**

6 8. No Memoranda of Contentions of Fact and Law are to be filed
7 unless so ordered by the Court.

8 9. Counsel shall confer and take the action required by Local
9 Rule 16.1(f)(4) on or before **February 2, 2009**. At this meeting, counsel
10 shall discuss and attempt to enter into stipulations and agreements
11 resulting in simplification of the triable issues. Counsel shall
12 exchange copies and/or display all exhibits other than those to be used
13 for impeachment, lists of witnesses and their addresses including
14 experts who will be called to testify, and written contentions of
15 applicable facts and law. The exhibits shall be prepared in accordance
16 with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the
17 preparation of the proposed final pretrial conference order.

18 10. The proposed final pretrial conference order, including
19 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)
20 pretrial disclosures, shall be prepared, served, and submitted to the
21 Clerk's Office on or before **February 9, 2009** and shall be in the form
22 prescribed in and in compliance with Local Rule 16.1(f)(6). Any
23 objections shall comply with the requirements of Fed. R. Civ. P.
24 26(a)(3). **Please be advised that the failure to file written objections**
25 **to a party's pretrial disclosures may result in the waiver of such**
26 **objections, with the exception of those made pursuant to Rules 402**
27 **(relevance) and 403 (prejudice, confusion or waste of time) of the**
28 **Federal Rules of Evidence.**

1 11. The final pretrial conference is scheduled on the calendar of
2 the Honorable William Q. Hayes on February 17, 2009 at 11:00 a.m. The
3 trial date will be assigned by Judge Hayes at the pretrial conference.

4 12. The dates and times set forth herein will not be modified
5 except for good cause shown.

6 13. Plaintiff's(s') counsel shall serve a copy of this order on
7 all parties that enter this case hereafter.

8 DATED: February 22, 2008

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10 BARBARA L. MAJOR
11 United States Magistrate Judge
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13 COPY TO:

14 HONORABLE WILLIAM Q. HAYES
15 U.S. DISTRICT JUDGE

16 ALL COUNSEL
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